IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

SURAJMAL KATARA & ORS V/S STATE & ORS

S.B.Civil Writ Petition No. 6115 of 2005
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

Date of order : 1st May, 2006

PRESENT
HON'BLE SHRI N.P.GUPTA,J.

REPORTABLE

Mr. P.R. Mehta, for the petitioners.

Mr. B.L. Bhati, S. Ladrecha, A.G.A. and
Mr. D.S. Rajvi, for the respondents.

BY THE COURT:

All these writ petitions arise in identical circumstances, and involve common question of law, therefore, they are being decided by this common judgment.

The petitioners seek direction in these writ petitions, to be given admission in the BSTC correspondence course, in pursuance of Annexure 9 and 10, so also to be allowed to continue to pursue the course, and after successfully passing the examination they may be issued the degree of BSTC course. It is also prayed, in the alternative, that if in future any BSTC correspondence

course is conducted by any of the fresh advertisement, than the petitioners may be considered for giving them the BSTC training, through correspondence, on preferential basis. The fourth prayer made is, to reinstate the petitioners in the services of Shiksha Mitra, or on any equivalent post, and after passing the BSTC course, their services may be regularized.

At the beginning of the arguments, learned counsel for the petitioner submitted, that he does not want to press relief no. 4 for reinstatement and regularization after passing BSTC. Thus, in substance the petitioner seeks a direction to be given admission in BSTC training course, pursuant to Annexure 9 and 10. It may also be observed here, that during course of arguments also, the whole stress was on this aspect only. Out of this bunch, in some of the writ petitions, show cause notices were issued, while some writ petitions have been admitted, in some matters, an interim order has been issued directing giving of provisional admission to the petitioner, with a rider, that, that will not create any right in favour of the petitioners. However, since the controversy involved is very short, and number of matters had arisen, vide order dt. 6.2.2006 all the matters were ordered to be listed together. It was understood, that at this stage itself, all the matters shall be finally decided, and with that understanding arguments were made in the cases that were

listed on 20.3.2006 and 22.3.2006, Accordingly those writ petitions had been finally heard and judgment was reserved. However before the judgment could be pronounced, the remaining matters also came to be listed, and at the request of the learned counsel for the parties requested that those cases (detailed in the Schedule-A) may also be decided on the same lines, and along with the above twenty cases, and therefore the matters detailed in the Schedule-A, are also being decided, by this judgment.

It may be noticed here that in two of the above cases being writ no. 6115 and 6113, and in writ no 1081/2006, 1083/2006 and 1084/2006 some/all the petitioners are said to have re-appointed during pendency of the writ petitions.

For the sake of convenience, I am taking the facts of leading matter, being Writ Petition No. 6115/2005.

The allegations of the petitioners are, that a circular was issued by the respondent no.2 on 23.11.2004, by which the State Government, under the scheme of Sarva Shiksha Abhiyan opened the Shiksha Mitra Centres to impart the education to the children of the age of 10 to 14 years. At that time, as the petitioners were already working in Lok Jumbish Project, which came to an end on 30.6.2004, by giving preference, some of the petitioners were given

appointment to the post of Shiksha Mitra. In this Writ No. 6115/2005 only two petitioners were so given appointment, while in other writ petitions, the petitioner's engagement with Lok Jumbish Project already came to an end. It is then alleged, that the respondent no.1 issued an advertisement dt. 2.6.2005, inviting applications for BSTC training course from the candidates i.e. Untrained para teachers, untrained Panchayat Teachers, Contract Teachers, Female Untrained Para Teachers, Dependent Widow, Divorced Untrained Teacher, Library Assistant, Madarsa para teacher, Shiksha Karmi and other untrained teachers, working in the government institutions. This course of BSTC is to be for two sessions, and for eligibility, the candidate should have academic qualification of 10+2 with 45% marks for the general candidates, and 40% for the SC/ST candidates. According to the petitioners, they fulfill this eligibility requirement. An amended advertisement was also issued on 7.6.2005, whereby the candidates who are from the DPEP scheme, and from the Shiksha Sahyogi cadre, who are discharging the duties for 6 hours, and 4 hours, respectively, were also held eligible to apply. These advertisements have been produced as Annexure 9 and 10. The petitioners have alleged, that they are eligible and qualified to be considered for being imparted training of BSTC course, through correspondence under Annex. 9 & 10, therefore, they approached the respondents, and submitted their application forms, but the forms were not accepted,

saying, that Shiksha Mitra are not included in the advertisement. This action of not giving them admission, is the subject matter of challenge.

The grounds on which it is challenged in the writ petition are, that the respondents have allowed the candidates, who are not even full time teachers, and their engagement, either as a Shiksha Karmi, Madarsa para teacher, contract teacher, untrained teachers etc., whatsoever be their programme, their programme of education is called as alternative education in the State of Rajasthan, while the Shiksha Mitra, who were discharging their services in Sarva Shiksha Abhiyan, which also is an alternative education programme, they could not be excluded, and therefore, the petitioners are entitled to be considered. The other ground given is, that the petitioners were fully eligible for admission, yet amended advertisement Annexure-10 was issued, allowing Shiksha Sahyogi working in the DPEP scheme, and discharging services for four hours, were also allowed, while duties discharged by Shiksha Mitra is for more than four hours, and they are related to DPEP/Sarva Shiksha Abhiyan Scheme, therefore, they are also entitled to be imparted training. The other ground given is, that the action takes away the legal right of the eligible candidates, and they are facing the stage of starvation, due to unemployment, and ignoring their regular experience of teaching to the primary

students, they are being denied admission, which is wrong, it is also alleged, that Article 45 enshrines the mandate for necessary child education, and every child upto the age of 14 years has a fundamental right of education, and Article 21 is to be construed in the light of Article 45, therefore, closing down the institutions like the Shiksha Mitra Centres is tentamounting to flouting the obligations of the State about universalization of education.

A reply has been filed on 21.12.2005, purporting to be reply on behalf of the respondents, while it appears to be reply filed on behalf of respondent no.1. In this reply it was submitted, that the respondents have floated a scheme, for providing facility of admission in the BSTC, and some guidelines were laid down, and the basic qualification/eligibility included the requirement, that those untrained para teachers working in the Rajeev Gandhi Swaran Jayanti Schools, untrained teachers of Panchayat Department, contract teachers, women para teachers working in the Primary and Middle Schools, dependents/widow/divorced untrained teachers, Lab Assistant, Madarsa para teachers, Shiksha Karmi and other untrained teachers were to be given admission to do BSTC course, to be completed in two sessions, including 30 months. It is contended that this course was made applicable for ‘‘in service’’ persons, and that too in the aforesaid categories, while the petitioners were working in

Lok Jumbish Project, and then in the Sarva Shiksha Abhiyan as Shiksha Sahyogi, and they ceased to continue long back. Hence, they are not at all entitled for admission in BSTC course, pursuant to advertisement Annexure-9. A specific plea was taken, to the effect that this course is not meant for the persons like the petitioner. Another objection taken was, about the writ petition being bad for misjoinder of cause of actions. Next objection taken is, that the petitioner has not applied for admission, even till the last date of making application, i.e. 25.6.2005, nor they have been able to show any evidence, showing, that they ever submitted application till 25.6.2005. Relying up the requirement of Annexure-9, it was contended, that the petitioners are not eligible. Thus, it was contended, that the petitioners are not entitled to any relief.

Another reply has been filed on 6.2.2006, on behalf of respondents no. 2 and 3, raising preliminary objections about maintainability of the writ petition, on the ground of different petitioners having different cause of action, they having been selected as Shiksha Mitra at different places, by different School Development and Management Committee, on a monthly honorarium of Rs. 40/- per child, subject to maximum of 20 child. The other ground taken is, that the petitioners were selected as Shiksha Mitra (Social Worker) which is not a service, and therefore, there is no violation of Article 309 and 311.

Another objection taken is, that Rajasthan Council of Primary Education, is not 'State' within the meaning of Article 12, as this is a society, under Rajasthan Societies Act, and therefore, writ petition should be dismissed. The other objection taken is, that none of the petitioners are working as Shiksha Mitra since 15.5.2005, and this fact has been concealed, which renders the writ petition liable to be dismissed. Then, the other objection taken is, that the petitioners were engaged/selected by School Development and Management Committee, who has not been impleaded as party respondent. Then, referring to merits, it is contended, that since the petitioners were not 'in service', and therefore, they are not eligible to take BSTC training through correspondence. According to the respondents, a high level committee decided on 11.6.2004, to take social service from the applicants, who were working in erstwhile Lok Jumbish Project, which came to an end w.e.f. 30.6.2004. Some more preliminary objections have been taken. Then giving parawise reply, it has, interalia been contended, that the primary duty of Shiksha Mitra was, to convenience the people and children, whereby he gave the lesson about importance of getting the education, and convincing them to impart the education, and that Shiksha Mitra, working in the Alternative Education, are not covered by the circulars Annexure 9 and 10.

A rejoinder has been filed on 13.2.2006,

submitting that in order to avoid multiplicity of writ petitions, and bulkiness of the file, the petitioner has given entire details, and information with the writ petition; and an affidavit is also filed in its support. It was maintained, that the petitioners do not have different causes of action, rather they have common cause of action, of challenging Annexure-9 and 10, by which right of admission has been confined to 'in service' candidates. It is contended, that the petitioners are engaged in similar Alternative Educational programme of the State Government, but only to deprive the petitioners of their right of education, guaranteed under Article 21-A of the Constitution, inserted the condition of 'in service'. It is also contended, that various Universities are running many of the correspondence courses for the persons, who otherwise cannot join the regular classes, due to one reason or the other, but no condition of candidate to be 'in service' is ever imposed. It is also contended, that so far admission in regular BSTC course is concerned, the same is also based on the criteria of merit, and there is no condition of candidate to be 'in service', therefore only by giving weightage to the persons who are working in various education programmes of the State, despite having lesser marks than the petitioners, will create a different class amongst the same category of persons. Thus, the petitioners could not be denied admission. Another contention has been advanced viz. that this condition of

candidate to be 'in service' is illegal and unconstitutional, as various programmes run by the State government, in the name of Lok Jumbish Project, are similar programmes to Shiksha Karmi, Shiksha Mitra, contract teacher, Madarsa teacher etc., and if the government would have adopted a scheme of BSTC course prior to 30.6.2004, then Shiksha Mitra working in the Lok Jumbish Project would have been entitled for admission, and after completion of the course, they would have acquired different status, though they were not continued in any educational programme run by the government. Then similar situation arise in case of any education programme run on the date of providing admission to 'in service' Shiksha Karmi, Contract teachers, Madarsa teacher, para teacher etc. if the BSTC course is discontinued between the tenure of two years, and they would complete the BSTC course, thereby they will acquire different status, which will create different class, despite the fact, those persons are less meritorious, having lesser experience, than the persons, who were not working on the relevant dates. Then it is pleaded, that the services of para teachers, employed in Rajiv Gandhi Pathshala, Madarsa teacher, Contract teachers, Shiksha Karmi, etc., are not governed by the statutory service condition, in view the of the judgment of Hon'ble the Supreme Court, including the recent one, in UPSC Vs. Girish Jayanti Lal Vaghela, decided on 2.2.2006, in appeal civil number 933/2006, and therefore, when the government has

permitted these persons, the petitioners could not be deprived of their right of education guaranteed under Article 21-A. Then it is pleaded, that during pendency of the writ petition, the petitioners have been given admission, they have deposited fees, and the examination form had been filled, with examination fees, admission in correspondence course does not require any additional infrastructure, like college building, class room, furniture and teachers, etc., and therefore, if the petitioners are allowed to complete the course, it would not create any additional financial or infrastructural burden. Likewise if the persons like the petitioners are allowed to complete the course, the same will not be an automatic eligibility for employment, while if the trained Shiksha Mitra will not be available from the same village, then the state will not be able to achieve the goal of such educational programmes, and trained persons from the other remote places will have to be posted, therefore, it is expedient in the interest of justice to allow the petitioners to continue the course.

In some of the writ petitions the petitioners have filed application for amendment of the writ petition, seeking to challenge the condition of the requirement of the candidate to be 'in service', while in some writ petitions, this challenge is already included, and the grounds for challenge are practically the same, as have

already been taken in the writ petitions, wherein it has already been challenged. Therefore, with the consciences of the learned counsel for the parties, without formally allowing the application, learned counsels were heard on the validity of this condition of eligibility, about the candidate to be required to be 'in service' as well.

Arguing the writ petition, submissions made in the writ petition were practically reiterated, and it was also submitted, that the condition of requirement of candidate to be 'in service' violates the legal and fundamental right of the petitioners. The petitioners were subjected to selection process through committee, and on the recommendations of the committee, they were paid salary, and they worked in the programme, as compared to the persons who are working at present, and the petitioners are at par, in the matter of experience. It was submitted, that during pendency of the writ petitions, the petitioners, in many of the writ petitions, have been appointed as Shiksha Mitra. It was also submitted, that 'in service' candidates are lesser qualified as compared to the petitioners, as they have longer experience. It was however admitted, that for getting admission, in regular BSTC course, it is not the requirement that the applicant should be 'in service'. Then it was stressed, that right of education is a fundamental right, which right of the petitioner has been taken away by the impugned action. Then Article 41 and 46

were also sought to be pressed in to service.

Mr. Rajvi, learned counsel for respondent No.2 and 3, submitted some preliminary objections about maintainability of the joint writ petition, material about the petitioners' engagement having not been placed on record. It was then submitted, that Shiksha Mitra are not included in Ex.9 and 10, and that as on the relevant date the petitioners are not 'in service'. Regarding Article 21-A, it was submitted that it neither applies, nor has been violated, as the petitioners have not been deprived from receiving education, and they can always receive training of BSTC in regular course, but they cannot claim admission under Annex.9 and 10. It was submitted, that there is no illegality in incorporating the condition of the requirement of the candidate to be 'in service', as this special correspondence course programme was introduced with a definite object, and was not introduced as a substitute for regular BSTC course, for everyone, and for all times. Therefore, it was submitted, that the petitioners are not entitled to any relief.

Then Mr. Bhati submitted, that after the petitioners' employment came to an end, they came in the category of General Candidates, possessing academic qualification, and entitled to apply for receiving regular BSTC course, wherein they are not debarred. It was

submitted that in Annex.9 and 10, Shiksha Mitra are not included. It was maintained, that wherever special courses are created, identical conditions are included. Thus, it was submitted, that the petitioners are not entitled to any relief.

In rejoinder, it was submitted, that Shiksha Mitra do take examination of the students, which shows that, they are teachers.

I have considered the submissions. So far as Article 21, 21-A, 41, 45 and 46 are concerned, it would only suffice to say, that they have no application whatever, to the controversy involved, and they do not, in any manner, advance the cause of the petitioners, in their favour.

No facts have been pleaded by either side, about the petitioners possessing, or not possessing other academic qualifications, as such this aspect need not be gone into be me.

Then coming to the merits, it is not in dispute that correspondence course in question does prescribe eligibility criteria in Annex.9 and 10, which includes the eligibility requirement to be, that the candidate should be ‘in service’, and serving, in the capacities as mentioned

in the advertisement Annex.9 and 10. Admittedly the petitioners do not fall in any of these categories of candidates. Firstly, as on the relevant day, except one or two petitioners, the petitioners were not 'in service' at all, and so far as one or two petitioners, who were in service, are concerned, they were also not 'in service' in any of the categories catalogued in Annex.9 and 10. In that view of the matter, the only question requires to be examined is, as to whether, incorporation of such a condition, to provide admission to the candidates who are 'in service', in the specified category of nature of services, as eligibility criteria for seeking admission in the course, as given by Annex.9 and 10, is sustainable, or is liable to be struck down?

Considering this aspect of the matter, suffice it to observe, that the categoric case of the respondents is, that it was a special course, floated for specific purpose of imparting BSTC training to certain categories of employees, employed in specified nature of jobs, by way of correspondence. Obviously, this course is de-hors the regular BSTC course.

In the moment, I am not called upon, nor am I supposed to make any observation, about the validity of any such action of the State, in floating such a course, or on the validity of such schemes, wherein such untrained

teachers were employed, as are cataloged in Annex.9 and 10, or as to whether, after receiving such training, they would be eligible to be regularised, or not, and therefore, I refrain from making any observation in that regard, so much so that I also do not feel like, to make any reference to the series of judgments of Hon'ble the Supreme Court, showing its grave concern, about such actions, nor do I propose to refer, even to the solemn undertaking, given on behalf of the State Government, before this Court, that it would not regularise any such candidate.

I stand advised to confine myself only to the validity of incorporation of such a condition, and right of the petitioners, to get admission in BSTC course pursuant to Annex. 9 and 10.

Even at the cost of repetition, the whole thrust of the submissions about the invalidity of the condition is, that it deprives the petitioners of their fundamental right of educations as guaranteed under Article 21-A of the Constitution, and that, it is likely to bring about two different classes from out of the similarly situated persons, and that, it prefers persons with lesser experience, as against the persons with better experience, being the petitioners.

In my humble view, none of these contentions are

sustainable. So far as the condition being violative of fundamental rights is concerned, I may gainfully quote Article 21-A of the Constitution, which reads as under:

> "21A Right to education- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

Suffice it to say, that on a bare reading of this Article, it is clear, that it does not confer any such right on the petitioners, to compel the respondents, to give admission to the petitioners, in such special correspondence course, which has been floated de-hors the rules, for specific purpose. Admittedly the petitioners are not the age of children of 6 to 14 years. I am not able to appreciate the argument of the learned counsel for the petitioner, if he means to contend, that for providing education to such children, the petitioner has any fundamental right to receive training under special correspondence course, and then claim a right to be employed for imparting such education.

So far the contention, about it likely to bring about two separate classes, is concerned, the contention is misconceived, inasmuch as, the classes comprehended are, the persons who are 'in service', and the other is, the persons, who are not 'in service'. What should be the

criteria, for giving admission in a particular course, is not a matter, which can be guided by the wisdom of the petitioners, nor can it be interfered with by this Court under Article 226, on that ground. According to the respondents, this correspondence course has been floated, only for the purpose of imparting training by correspondence, to 'in service' candidates. Obviously for other candidates, the regular course of BSTC is already available, of which the petitioners are, admittedly, not deprived. It is well nigh possible, that even out of the category of posts, detailed in Annex.9 and 10, there may be any number of candidates, who were in employment sometimes, but are not 'in service' as on the relevant date, and obviously they cannot claim admission to this correspondence course, simply because of their being 'in service' once upon a time. Likewise, apart from the fact, that the petitioners were not in employment in any of the categories detailed in Annex.9 and 10, in my view, it is not open to the petitioners to contend, that this correspondence course should be thrown, wide open, to all categories of persons, who had been discharging the duties, akin to the teachers, once upon a time.

For considering the validity of the condition, in my view, what is required to be seen is, as to whether the condition is relevant to the object sought to be achieved, or has any rational behind it. According to the

respondents, the object is, to train those persons, who are 'in service', in specified jobs, and is not to establish a regular training course, de-hors the provisions of regular course. Thus it is clear that the condition has a specific object, and it is not the case of the petitioners, that this is not the object, or that there is any other object. In that view of the matter, simply because, in fulfillment of the object, with which the scheme has been floated, it does not accord any benefit to the petitioners, it cannot be said, that the condition is bad, or is required to be interfered with, by this Court under Article 226.

Then so far as the contention, about the scheme, meant to give preference to lesser experienced persons is concerned, in my view, this is of no relevance, in view of the object, with which the scheme has been floated. Thus considering from any stand point, it cannot be said, either, that the conditions imposed in Annex.9 and 10 are bad, or that the petitioners are entitled to claim admission in the correspondence course.

Regarding some of the persons, who were 'in service' as on the relevant date, suffice it to say, that even those persons, were not 'in service' in any of the categories detailed in Annex.9 and 10, therefore, that also is of no consequence.

Regarding the submission, that the petitioners have already undertaken training for sometime, and examination forms are to be filled, and admission fees had been paid, it would suffice to say, that comprehending this eventuality itself, while granting interim stay, this Court expressly directed, that this interim order shall be subject to the decision of the writ petition, and will not create any right, in favour of the petitioners. Therefore, no equities can be allowed to be invoked, on these considerations, as submitted by learned counsel for the petitioners.

The writ petitions thus, have no force and are dismissed.

(N.P.GUPTA),J.

SCHEDULE-A

1. S.B.Civil Writ Petition No. 6116 of 2005
(Manilal Damot & Ors. Vs. State & Ors.)

2. S.B.Civil Writ Petition No. 6112 of 2005
(Mohanlal Patel & Ors. Vs. State & Ors.)

3. S.B.Civil Writ Petition No. 6122 of 2005
(Kachrulal Maiyda & Ors. Vs. State & Ors.)

4. S.B.Civil Writ Petition No. 6118 of 2005
(Devi Lal Khandiya & Ors. Vs. State & Ors.)

5. S.B.Civil Writ Petition No. 6113 of 2005
(Jagannath Brahmania & Ors. Vs. State & Ors.)

6. S.B.Civil Writ Petition No. 6120 of 2005
(Someshwar Charpota & Ors. Vs. State & Ors.)

7. S.B.Civil Writ Petition No.5976 of 2005
(Amar Singh & Ors. Vs. State & Ors.)

8. S.B.Civil Writ Petition No.6509 of 2005
(Shyam Lal Charpota & Ors. Vs. State & Ors.)

9. S.B.Civil Writ Petition No.6511 of 2005
(Kari Lal Meena & Ors. Vs. State & Ors.)

10. S.B.Civil Writ Petition No.6512 of 2005
(Narayan Lal Makvana & Ors. Vs. State & Ors.)

11. S.B.Civil Writ Petition No.5887 of 2005
(Hakru Charpota & Ors. Vs. State & Ors.)

12. S.B.Civil Writ Petition No.5886 of 2005
(Laxman Lal Patel & Ors. Vs. State & Ors.)

13. S.B.Civil Writ Petition No.5888 of 2005
(Shanti Lal & Ors. Vs. State & Ors.)

14. S.B.Civil Writ Petition No.5521 of 2005
(Kamlesh Damore & Ors. Vs. State & Ors.)

15. S.B.Civil Writ Petition No. 6119 of 2005
(Prabhulal Maiyda & Ors. Vs. State & Ors.)

16. S.B.Civil Writ Petition No.6121 of 2005
(Devi Lal Katija & Ors. Vs. State & Ors.)

17. S.B.Civil Writ Petition No.6117 of 2005
(Sohan Lal Ninama & Ors. Vs. State & Ors.)

18. S.B.Civil Writ Petition No.6114 of 2005
(Arvind Kumar Katara & Ors. Vs. State & Ors.)

19. S.B.Civil Writ Petition No.6510 of 2005
(Bapu Lal Ninama & Ors. Vs. State & Ors.)

20. S.B.Civil Writ Petition No.1080/2006
(Rajendra Kumar Damore & Ors. Vs. State & Ors.)

21. S.B.Civil Writ Petition No.1079/2006
(Amar Singh & Ors. Vs. State & Ors.)

22. S.B.Civil Writ Petition No.1081/2006
(Hem Raj Meena & Ors. Vs. State & Ors.)

23. S.B.Civil Writ Petition No.1083/2006
(Raghuveer Singh Chouhan & Ors. Vs. State & Ors.)

24. S.B.Civil Writ Petition No.1082/2006
(Mahendra Singh & Ors. Vs. State & Ors.)

25. S.B.Civil Writ Petition No.1084/2006
(Rajendra Singh & Ors. Vs. State & Ors.)